Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1977

Case No. 77-985

BRUCE GEISINGER,

Petitioner,

v.

BOARD OF COUNTY COMMISSIONERS OF MIAMI COUNTY, OHIO, ET AL.,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

I. Whether the federal Constitution restricts the legislative power of a state to create and abolish its public offices.

II. Whether the failure to raise a federal claim in the appellate courts constitutes a waiver of such claim.

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STATEMENT

Petitioner was elected to the office of judge of the Troy Municipal Court for a full term of six years commencing January 1, 1974.

The following year the General Assembly of Ohio enacted Amended Substitute House Bill No. 205 which amended certain statutes relating to municipal courts. As pertinent to this litigation the Bill created the Miami County Municipal Court, whose territorial jurisdiction included the City of Troy; provided for the election of two full-time judges to that court at the general election of 1975; and provided for the abolishment of the office of the judge of the Troy Municipal Court effective upon the commencement of the terms of office of the judges of the Miami County Municipal Court.

Petitioner, on August 25, 1975, instituted an original action in the Supreme Court of Ohio seeking a writ of prohibition to restrain the election of the judges of the

Miami County Municipal Court. The Supreme Court dismissed the action.

On November 4, 1975, two judges were elected to the Miami County Municipal Court. They commenced their terms of office on January 1, 1976.

Petitioner instituted this litigation in the Court of Common Pleas of Miami County. He requested a declaratory judgment that the portions of Amended Substitute House Bill No. 205, which provided for the abolishment of his office and the election of the new judges, were unconstitutional. The court held that the General Assembly had abolished the Troy Municipal Court and that nothing in the Constitution prohibited it from doing so.

The judgment of the Court of Common Pleas was affirmed by the Court of Appeals and the Supreme Court.

ARGUMENT

There Is No Important Question Of Federal Law.

Petitioner claims that the abolishment of his office prior to the expiration of the term for which he was elected violates rights guaranteed him by the Constitution of the United States. This claim is foreclosed by numerous decisions of this Court. The power to create an office and the power to abolish it are co-extensive. The legislature may abolish any office which it has created. It may do so at any time it chooses, either during or at the end of the term of the incumbent. Nothing in the federal Constitution restricts this power.

> The legislative power of a state, except insofar as restrained by its own constitution, is at all times absolute with respect to all offices within its reach. It may at pleasure create or abolish them or modify their duties. It may also shorten or lengthen the term of service. And it may increase or diminish the salary or change the mode of compensation. *Newton* v. *Commrs. of Mahoning County*, 10 Otto. (100 U.S.) 548, 558 (1880).

See also Higgenbotham v. *City of Baton Rouge*, 306 U.S. 535, 538 (1939); *Dodge* v. *Bd. of Educ.*, 302 U.S. 74, 78 (1937); *Kingston* v. *McLaughlin*, 359 F.Supp. 25, 28-29 (D. Mass. 1972), *aff'd*, 441 U.S. 923 (1973).

Petitioner is unable to establish any property interest in his office. The Constitution does not create such interests. They are created and their limits defined by state law. *Bd. of Regents* v. *Roth*, 408 U.S. 564, 578 (1972).

The Supreme Court of Ohio has repeatedly held that an officeholder has no vested interest or property right in his office. Paragraph 3 of the syllabus of *Fuldauer* v. *Cleveland*, 32 Ohio St.2d 114 (1972); paragraph 1 of the syllabus of *State ex rel. Trago* v. *Evans*, 166 Ohio St. 269 (1956); paragraph 1 of the syllabus of *State ex rel. Gordon* v. *Barthalow*, 150 Ohio St. 499 (1948); paragraph 1 of the syllabus of *Elyria* v. *Vandemark*, 100 Ohio St. 365 (1919).

Petitioner claims that his reliance on the "assurances afforded by the statute and organic law of the State of Ohio" is sufficient to create a property interest in his office. In light of the repeated determinations of the Supreme Court of Ohio, cited above, such reliance cannot be considered reasonable.

For purposes of equal protection analysis legislation affecting public employment is judged under the rational basis standard. *Massachusetts Bd. of Retirement* v. *Murgia*, 427 U.S. 307, 313-314 (1976). The legislation involved herein satisfies this standard. The legislative determination that the interests of justice might better be served by a municipal court with county wide jurisdiction rather than a court with more limited jurisdiction, cannot be characterized as wholly arbitrary or capricious. It, therefore, complies with the requirements of the equal protection clause. *McGowan* v. *Maryland*, 366 U.S. 420, 425-426 (1961); *San Antonio Ind. School Dist.* v. *Rodriguez*, 411 U.S. 1, 40 (1973) (Stewart, J., concurring).